

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT WORKMAN,

Petitioner,

v.

WARDEN, SCI-GREENE, et al.,

Respondents.

Civil Action No. 07-146 Erie

MEMORANDUM ORDER

This petition for writ of habeas corpus was received by the Clerk of Court on June 7, 2007, and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation [21], filed on December 1, 2008, recommends that:

1. the instant Petition be dismissed for lack of jurisdiction inasmuch as this is at least the second habeas action which Petitioner has filed challenging his judgment of sentence and Petitioner has not obtained authorization from the Third Circuit Court of Appeals to proceed with the instant action as required by 28 U.S.C. § 2244(b)(3)(A);
2. a certificate of appealability be denied; and
3. Respondents' Motion to Dismiss [16], based upon the alleged untimeliness of the instant petition, be denied as moot.

The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail at SCI Greene, where he is incarcerated, and on Respondents. Petitioner filed his objections [22] to Chief Magistrate Judge Baxter's Report and Recommendation on December 15, 2008. After de novo review of the petition and documents in the case, together with the Report and Recommendation and Petitioner's objections thereto, the following order is entered:

AND NOW, this 22nd day of January, 2009;

IT IS ORDERED that the instant petition for writ of habeas corpus be, and hereby is, DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that no certificate of appealability shall be issued, inasmuch as jurists of reason would not find it debatable whether the instant petition is jurisdictionally barred.

IT IS FURTHER ORDERED that the Respondent's Motion [16] to Dismiss be, and hereby is, DENIED as moot.

The Report and Recommendation [21] of Chief Magistrate Judge Baxter, filed on December 1, 2008, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, Chief U.S. Magistrate Judge